

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

*CYNTHIA WARMBIER, individually and as
personal representative of the Estate of Otto
Warmbier, et al.,*

Plaintiffs/Judgment Creditors,

-against-

DEMOCRATIC PEOPLE'S REPUBLIC OF
KOREA,

Defendant/Judgment Debtor.

Case No. 1:21-MC-0021 (LEK/DJS)

UNOPPOSED MOTION TO UNSEAL CERTAIN SEALED DOCUMENTS

Plaintiffs/Judgment Creditors Cynthia Warmbier and Frederick Warmbier, individually, and as personal representatives of the Estate of Otto Warmbier (together, the “Judgment Creditors”) request this Court to enter an Order unsealing, pursuant to limited redactions, certain sealed documents, specifically, (i) the Judgment Creditors’ Sealed Memorandum of Law and Declaration in Support of the Request for the Issuance of Writ of Execution, Dkt. No. 7 (the “Sealed Memorandum and Declaration”), (ii) the Sealed Memorandum-Decision and Order, Dkt. No. 8 (the “Sealed Order”) and (iii) the Sealed Writ of Execution, Dkt. No. 9 (the “Sealed Writ,” together with the Sealed Memorandum and Declaration and the Sealed Order, the “Sealed Documents”).

BACKGROUND

1. On December 24, 2018, Judgment Creditors obtained a judgment in the amount of \$501,134,683.80 against Defendant Democratic People’s Republic of Korea (“North Korea”)

under section 1605A(c) of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1610 *et seq.* (the “Judgment”).

2. On March 17, 2021, Judgment Creditors registered the Judgment with this Court.

See Dkt. No. 1 (Registration of Foreign Judgment).

3. On March 24, 2021, Judgment Creditors submitted to the Court a proposed writ of execution relating to certain assets (the “Subject Funds”) in the possession of the State of New York, Office of the State Comptroller, Thomas P. DiNapoli (the “Comptroller”) and filed a corresponding sealing motion on March 26, 2021. *See* Dkt. Nos. 4 (“Proposed Writ”), 5 (“Motion to Seal”).

4. On March 31, 2021, this Court directed the Judgment Creditors “to file a memorandum of law under seal establishing their entitlement to a writ of execution under § 201(a) of the Terrorism Risk Insurance Act and any other applicable federal or state substantive requirements.” *See* Dkt. No. 6.

5. Accordingly, on April 2, 2021, Judgment Creditors filed the Sealed Memorandum and Declaration. *See* Dkt. No. 7.

6. On April 8, 2021, the Court issued the Sealed Order, finding that Judgment Creditors were entitled to issuance of a writ of execution and, among other things, directing the Clerk of the Court to issue the writ of execution and the Judgment Creditors to cause the writ to be served upon the Comptroller as garnishee. *See* Dkt. No. 8.

7. Also on April 8, 2021, the Clerk of the Court issued the Sealed Writ relating to the Subject Funds to partially satisfy the Judgment. *See* Dkt. No. 9.

8. On or about April 21, 2021, the U.S. Marshal Service effected service of the Writ on the Comptroller. *See* Dkt. No. 12.

9. On April 28, 2021, the Court entered an order granting Judgment Creditors' motion to share copies of the Sealed Memorandum and Declaration and Sealed Order with the Comptroller in order to allow for the Judgment Creditors and the Comptroller to confer, pursuant to a governing protective order (the "Protective Order," *see* Dkt. No. 5, Ex. 3), on which information contained within the Sealed Documents may be disclosed publicly. *See* Dkt. Nos. 11, 13.

10. As a result of communications between counsel for the Judgment Creditors and the Comptroller and upon review of the Sealed Documents pursuant to the Court's order, the Comptroller has agreed that the Sealed Documents are no longer subject to the Protective Order and may be disclosed as determined by the Judgment Creditors. Specifically, the Comptroller has reviewed this motion and consents to the relief requested herein.

RELEVANT LAW

11. "Once a court orders documents before it sealed, the court continues to have authority to enforce its order sealing those documents, as well as authority to loosen or eliminate any restrictions on the sealed documents." *United States v. Pickard*, 733 F.3d 1297, 1300 (10th Cir. 2013) (citing *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 141 (2d Cir.2004)).

REQUESTED RELIEF

12. For the reasons set forth above, the Judgment Creditors request the Court to unseal the Sealed Order and Sealed Writ in their entirety and the Sealed Memorandum and Declaration in redacted form. The limited redactions relate to personally identifying information, including, for example, bank account numbers. The Sealed Documents were previously placed under seal at the Judgment Creditors' request on the basis that certain confidential information contained therein were subject to protective order.

13. Filed in conjunction with this motion is Sealed Exhibit 1, which is a copy of the redacted version of the Sealed Memorandum and Declaration to be filed publicly by the Court should this motion be granted.

CONCLUSION

14. For the reasons set forth herein, Judgment Creditors respectfully request that the Court unseal the Sealed Order and Sealed Writ in their entirety and the Sealed Memorandum and Declaration in redacted form.

WHEREFORE, Judgment Creditors respectfully request that the Court:

(A) Enter an order in the form attached hereto as Exhibit A unsealing the (i) the Judgment Creditors' Sealed Memorandum of Law and Declaration in Support of the Request for the Issuance of Writ of Execution, Dkt. No. 7, in redacted form (a copy of which is attached hereto as Sealed Exhibit 1), (ii) the Sealed Memorandum-Decision and Order, Dkt. No. 8 and (iii) the Sealed Writ of Execution, Dkt. No. 9; and

(B) Grant such further relief as the Court deems just and proper.

Dated: June 30, 2021

Respectfully submitted,

/s/ Jason H. Cowley
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Attorney for Judgment Creditors

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, the foregoing document was served upon the following counsel by e-mail:

Wendy Reeder
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Michael Kogut
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/s/ Jason H. Cowley
Jason H. Cowley

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

*CYNTHIA WARMBIER, individually and as
personal representative of the Estate of Otto
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-against-

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ORDER

For good cause shown, based upon the Judgment Creditors' Unopposed Motion to Unseal Certain Sealed Documents (the "Motion"), it is hereby:

ORDERED that the Motion is GRANTED;

ORDERED that the Sealed Memorandum of Law and Declaration in Support of the Issuance of Writ of Execution (Dkt. No. 7) shall be unsealed with certain redactions, in the form attached as Sealed Exhibit 1 to the Motion; and

ORDERED that the Sealed Memorandum-Decision and Order (Dkt. No. 8) and Sealed Writ of Execution (Dkt. No. 9) shall be unsealed in their entirety.

IT IS SO ORDERED.

DATED: July __, 2021
Albany, New York

The Honorable Lawrence E. Kahn
United States District Judge

EXHIBIT 1

(Filed Under Seal)